

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.
★ OCT 19 2010 ★

UNITED STATES OF AMERICA,

– against –

MIGUEL MOROCHO-NARANJO,

Defendant.

10-CR-253-01 (JBW)

BROOKLYN OFFICE

Statement of Reasons Pursuant to
18 U.S.C. § 3553(c)(2)

JACK B. WEINSTEIN, Senior United States District Judge:

A sentencing court shall “state in open court the reasons for its imposition of the particular sentence.” 18 U.S.C. § 3553(c). If the sentence is not of the kind prescribed by, or is outside the range of, the sentencing guidelines referred to in section 3553(a)(4), the court shall indicate the specific reasons for imposing a sentence different from the guidelines. 18 U.S.C. § 3553(c)(2). These “reasons must also be stated with specificity in the written order of judgment and commitment.” *Id.* Even though the mandatory nature of the guidelines has been excised and they are now “advisory,” *see United States v. Booker*, 543 U.S. 220, 245-46 (2005), the sentencing court must still adhere to the requirements of 18 U.S.C. § 3553(c)(2). *United States v. Jones*, 460 F.3d 191, 197 (2d Cir. 2006).

The sentencing court’s written statement of reasons shall be “a simple, fact-specific statement explaining why the guidelines range did not account for a specific factor or factors under § 3553(a).” *United States v. Rattoballi*, 452 F.3d 127, 138 (2d Cir. 2006). Such a statement should demonstrate that the court “considered the parties’ arguments and that it has a reasoned basis for exercising its own legal decisionmaking authority.” *United States v. Cavera*, 550 F.3d 180, 193 (2d Cir. 2008) (quoting *Rita v. United States*, 551 U.S. 338, 356 (2007)) (internal quotations and alterations omitted).

On May 18, 2010, Miguel Morocho-Naranjo plead guilty to a single-count indictment. It charged that on February 16, 2010, the defendant, an alien who had been deported from the United States after a conviction for the commission of an aggravated felony, was found in the United States without the Secretary of the United States Department of Homeland Security having expressly consented to his applying for admission, in violation of 8 U.S.C. §§ 1326(a) and (b)(2).

Morocho-Naranjo was sentenced on September 30, 2010. The proceeding was videotaped in order to develop an accurate record of the courtroom atmosphere and the factors and considerations that a district court must evaluate in imposing a sentence under 18 U.S.C. § 3553(a). *See In re Sentencing*, 219 F.R.D. 262, 264-65 (E.D.N.Y. 2004) (utility of videotape on appeal).

The court finds the total offense level to be twenty-one and defendant's criminal history category to be category II, yielding a guidelines range of imprisonment of between forty-one and fifty-one months. The calculation of the total offense level included a three-point adjustment for acceptance of responsibility, based on his guilty plea and notification to the government in a timely manner. The offense carried a maximum term of imprisonment of twenty years. 8 U.S.C. § 1326(b)(2). The guidelines range of fine was from \$7,500 to \$75,000.

Morocho-Naranjo was sentenced to one year and one day's incarceration and three years' supervised release. A \$100 special assessment was imposed. No fines were imposed because the defendant does not have any assets, and it is unlikely that he will have any in the future to pay a fine.

Respectful consideration was given to the sentencing guidelines, the Sentencing Commission's policy statements and all other factors listed under 18 U.S.C. § 3553(a) to ensure

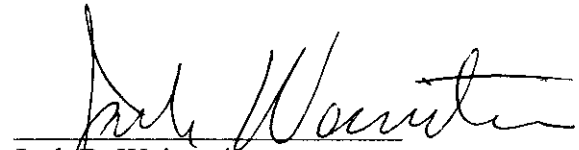
that the sentence is “sufficient, but not greater than necessary, to comply with the purposes” of sentencing. 18 U.S.C. § 3553(a). The court imposed a non-guideline sentence under 18 U.S.C. § 3553(a) and *Booker*. Cf. Abe Cho, Note, *Lowering Sentences for Illegal Immigrants? Why Judges Should Have Discretion to Vary from the Guidelines Based on Fast-Track Sentencing Disparities*, 43 Colum. J. L. & Soc. Probs. 447 (2010) (arguing federal district judges have discretion to impose lower sentences in immigration cases to avoid sentencing disparities with “fast-track” programs found predominately in southwest border states).

The court considered the “nature and circumstances of the offense and the history and characteristics of the defendant.” See 18 U.S.C. § 3553(a)(1). The crime involved the unauthorized reentry of the defendant—who was deported following a violation of probation conditions imposed because of a conviction for an aggravated felony—into the United States.

It was noted that the guidelines were driven largely by the one prior aggravated felony, assault in the second degree, which occurred in 2001. The defendant has a history of mental problems and limited education. He has a devoted family both in the United States and in his native Ecuador. His sister testified about his psychological problems and three of his four children were present at the sentencing. A sentence of one year and one day’s imprisonment reflects the seriousness of the offense and will promote respect for the law and provide just punishment. See 18 U.S.C. § 3553(a)(2)(A).

Under section 3553(a)(2)(B), there are two major considerations: specific and general deterrence. General deterrence is satisfied with the sentence imposed. The sentence will send a clear message that illegal reentry into the United States following an aggravated felony conviction and deportation will result in a substantial prison sentence. Specific deterrence is

achieved through incapacitation and the likely deportation that will follow. It is unlikely that he will engage in further criminal activity in light of his remorse and family members' attention.



Jack B. Weinstein
Senior United States District Judge

Dated: October 14, 2010
Brooklyn, New York